

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-185985

DATE: May 27, 1976

MATTER OF: Webb Builders Hardware Inc.

DIGEST:

1. Where bid bond accompanying low bid omitted the "Certificate as to Corporation," such omission may be waived as minor deviation, since surety was fully liable as bid bond was otherwise in order.
2. Failure of corporate surety to have signature attested to by subscribing witness does not affect execution as bid bond instruction (Form No. DC 2640-5) requires only individuals to supply witnesses.
3. Contracting officer has primary responsibility to determine authority of individual to bind bidder. Based on the record, contracting officer had reasonable basis to conclude that questioned individual was authorized to sign bid on behalf of corporation.

Invitation for bids (IFB) No. 1180-AA-02-0-5-CC (Carpentry), for the District of Columbia New Court Facility, was issued by the District of Columbia on December 9, 1975. At bid opening on February 24, 1976, Cord Contracting Co., Inc. (Cord), was the low bidder. The bid bond of Cord was signed by its corporate secretary and attested to by the company's vice president. However, the "Certificate as to Corporation" was not properly executed and the signature of the surety was not attested to on the bid bond form. The contracting officer waived the irregularities as minor deviations concluding that the low bid of Cord was responsive and that the bid bond was valid. The protest of Webb Builders Hardware Inc. (Webb), to our Office followed.

Webb protests the award to the low bidder contending that the failure to properly execute the bid bond rendered Cord's bid non-responsive. After bid opening, Cord furnished the contracting officer a copy of the minutes of a special joint meeting establishing the authority of the corporate secretary to sign the contract and bidding documents. The contracting officer considered the bid bond of Cord to be enforceable in that it was signed by the required principals and a power of attorney was included for the signature of the surety. For the reasons that follow, we concur with the contracting officer's decision.

B-185985

Instructions Nos. 2 and 4 on the bid bond form (Form No. DC 2640-5) state:

"2. Corporation's name should appear exactly as it does on Corporate Seal and inserted in the space designated 'Principal' on the face of this form. If practicable, bond should be signed by President or Vice President; if signed by other official, evidence of authority must be furnished. Such evidence should be in the form of an Extract of Minutes of a Meeting of the Board of Directors, or Extract of Bylaws, certified by the Corporate Secretary, or Assistant Secretary and Corporate Seal affixed thereto. CERTIFICATE AS TO CORPORATION must be executed by Corporate Secretary, or Assistant Secretary.

* * * * *

"4. Corporations executing the bond shall affix their Corporate Seals. Individuals shall sign full first name, middle initial and last name opposite the word 'seal'; two witnesses must be supplied, and their addresses, under the work 'attest.' If executed in Maine or New Hampshire, an adhesive seal shall be affixed."

We have consistently held that the bid bond requirements must be considered a material part of the IFB and the failure to comply with these requirements cannot be waived by the contracting officer. See 38 Comp. Gen. 532 (1959); 39 id. 60 (1959); 44 id. 495 (1965); 50 id. 530 (1971); 52 id. 223 (1972). The purpose of the bid bond is to secure liability of a surety to the Government in accordance with the terms of the bond. The determination of the sufficiency of a bid bond relates to whether the Government will receive the full and complete protection it contemplated in the event the bidder fails to execute the required documents and deliver the required performance and payment bonds. See 39 Comp. Gen., supra; 52 id., supra. Additionally, we have stated that the Instructions on the bid bond are not to be regarded as the type of material requirements with which bidders must comply in order to be responsive. See General Ship and Engine Works, Inc., 55 Comp. Gen. 422 (1975).

B-185985

Here, the record discloses that the bid bond was signed by the attorney-in-fact for the surety. Further, the corporate seal of the surety was impressed in the place provided and there was an accompanying notarized acknowledgement stating that the attorney-in-fact personally appeared before the notary and acknowledged his signature on the bid bond. Additionally, a copy of the power of attorney showing the authority of its attorney-in-fact was included for the signature of the surety. Webb contends that the failure to attest the surety's signature renders the bond unenforceable. We are of the opinion that attestation is not essential to the enforceability of the bid bond. See 12 Am. Jur. 2d Bonds § 12 (1964).

In 11 C.J.S. Bonds § 17 (1938), dealing with the construction and operation of instruments under seal, it is stated that acknowledgment and attestation are necessary only where required by statute. Here, a statute does not make such proof essential to the validity of the bid bond. In fact, a reasonable reading of the instructions would seem to indicate that only individuals need supply attesting witnesses in executing the bond. Corporations, on the other hand, must affix their corporate seals, which the surety did in this instance. Nevertheless, the signature of the attorney-in-fact for the surety was acknowledged by a notary public declaring the genuineness of the execution of the bid bond.

Based on the above, we must conclude that the surety properly executed the bid bond. In reaching this conclusion, we do not need to decide Webb's other contention concerning the failure of Cord to fully execute the "Certificate as to Corporation." Even assuming for the sake of argument that such failure affected the validity of Cord's signature on the bond, we have held that a bid bond not signed by the bidder may be considered valid if the bid bond is otherwise in order. B-173475, October 22, 1971; B-164453, July 16, 1968. In this regard, Cord, in signing its bid, indicated that a bid guaranty of 5 percent of the total amount bid in the form of a bid bond was enclosed. Also, the bid form on page one stated:

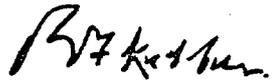
"The undersigned agrees that if he is awarded the Contract within 60 days after bid opening date and he is notified thereof, he will within 10 days after the prescribed forms are forwarded for execution, or within any authorized extension of time, execute and deliver a Contract on Form

B-185985

No. DC 2640-5 and furnish performance and payment bonds on Form No. DC 2640-7 and Form No. DC 2640-8 with good and sufficient surety; and that if he fails or refuses, required bid guaranty shall be applied as specified in Instructions to Bidders." (Emphasis added.)

With respect to Webb's allegation that Cord failed to establish the current authority of the individual who signed the bid, we note that Cord's bid was signed by the corporate secretary and attested to by the vice president under corporate seal. Following bid opening, Cord submitted minutes of a special joint meeting of the officers, directors and stockholders of the company establishing the authority of the secretary to execute bid documents. Evidence establishing the authority of the signer of a bid to bind the bidder may be presented after bid opening. Corbin Sales Corporation, B-182978, June 9, 1975, 75-1 CPD 347. The evidence required to establish the authority of a particular person to bind a corporation is for the determination of the contracting officer. See General Ship and Engine Works, Inc., 55 Comp. Gen. 422, 426 (1975), 75-2 CPD 269; Atlantic Maintenance Company, 54 Comp. Gen. 686, 692 (1975) 75-1 CPD 108. The record before our Office reflects that the contracting officer acted reasonably in concluding that the individual who signed as corporate secretary was authorized to execute bids on behalf of Cord. Further, the protester has not submitted any evidence which would lead to a contrary conclusion. As the bid was proper in all other respects, Cord would be fully bound to perform upon acceptance of the bid.

Consequently, we do not agree with Webb's contention that the bidder would in effect have an election as to whether or not it wished to have its bid considered. Accordingly, since the defects in Cord's bid bond may be waived as minor informalities, the protest of Webb is denied.


Deputy Comptroller General
of the United States